

MAY 28 2012

Board of Vocational Nursing and Psychiatric Technicians

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# BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

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12 WALTERS SOH AKEBE, AKA WALTER S. AKEBE

Attorneys for Complainant

9354 Defiance Circle

Sacramento, California 95827

Vocational Nurse License No. VN 253019

Respondent.

Case No. VN-2011-1343

#### ACCUSATION

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

#### **PARTIES**

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

#### **Vocational Nurse License**

2. On or about September 23, 2010, the Board issued Vocational Nurse License Number VN 253019 to Walters Soh Akebe, also known as Walter S. Akebe ("Respondent"). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

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## **STATUTORY PROVISIONS**

- 3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing Practice Act.
- 4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Bureau may renew an expired license at any time within four years after the expiration.
  - 5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, section 2840, et seq.)] for any of the following:

- (a) Unprofessional conduct . . . .
- (f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.
- 6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

#### **COST RECOVERY**

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

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enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

# FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

8. Respondent is subject to discipline under Code section 2878, subdivision (f), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, or duties of a vocational nurse, in that on or about September 26, 2012, in the case of *People v. Walter S. Akebe* (Sacramento County Superior Court (2012), Case No. 11T05058), Respondent was convicted by the court on his plea of nolo contendere of violating Vehicle Code section 23103.5 (a charge for reckless driving substituting a plea of nolo contendere of violating Vehicle Code section 23152 for driving under the influence of alcohol), a misdemeanor. The circumstances of the crime are that on or about August 28, 2011, Respondent drove a vehicle while having a blood alcohol level of .11%.

# SECOND CAUSE FOR DISCIPLINE

(Use of Alcohol to an Extent or in a Manner Dangerous or Injurious)

9. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (a), on the grounds of unprofessional conduct as defined by Code section 2878.5, subdivision (b), in that on or about August 28, 2011, Respondent consumed alcoholic beverages to an extent or in a manner dangerous or injurious to himself or others, when he drove a vehicle under the influence of alcohol, as set forth in paragraph 8, above.

# THIRD CAUSE FOR DISCIPLINE

(Conviction of a Crime Involving the Consumption of Alcohol)

10. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (a), on the grounds of unprofessional conduct as defined by Code section 2878.5, subdivision (c), in that Respondent was convicted of a crime involving the consumption of alcohol, as set forth in paragraph 8, above.

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### **MATTERS IN AGGRAVATION**

11. To determine the degree of discipline to be assessed against Respondent, if any, Complainant alleges that on or about September 3, 2010, the Board notified Respondent that it approved his application for vocational nurse licensure despite a conviction for a crime substantially related to the qualifications, functions, and duties of a vocational nurse, and that similar behavior or violation of laws or regulations governing his practice as a vocational nurse may result in disciplinary action against his license. Specifically, on or about November 15, 2007, in a criminal proceeding entitled People v. Walters S. Akebe in Alameda County Superior Court Superior Court (2007), Case Number 124519-6, Respondent was convicted by the Court on his plea of no contest of violating Vehicle Code 23152, subdivision (b) (driving a vehicle under the influence of alcohol with a blood alcohol count of .08% or more), a misdemeanor. The circumstances are that on or about May 30, 2007, Respondent drove a vehicle with a blood alcohol level in excess of .08%, and was involved in a collision.

#### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

- 1. Revoking or suspending Vocational Nurse License Number VN 253019, issued to Walters Soh Akebe, also known as Walter S. Akebe;
- 2. Ordering Walters Soh Akebe, also known as Walter S. Akebe, to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: May 28, 2013

TERESA BELLO-JONES, J.D., M.S.N., R.N.

**Executive Officer** 

Board of Vocational Nursing & Psychiatric Technicians

State of California *Complainant* 

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